

# Three legal ways to defer a big gain and their deadlines

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**As of October 10, 2026.** The tax code has three common ways to spread or postpone the tax on a large sale: a **section 1031 exchange**, a **Delaware statutory trust** used as the 1031 replacement, and a **section 453 installment sale**. Each one **defers** tax. None erases it. And each has a deadline that passes at closing or shortly after. Miss it and the whole gain is taxed in the year of sale.

## 1 Section 1031 like-kind exchange

- **What it does:** you sell investment or business real estate and buy other real estate. The gain carries over into the new property instead of being taxed now.
- **Real property only.** Since 2018 it does not cover equipment, vehicles, stock or a business. A main home does not qualify.
- **You cannot touch the money.** A qualified intermediary must hold the proceeds. If you or your agent receive the cash, the exchange fails.
- **Boot is taxed.** Cash you keep, or debt you pay off and do not replace, is taxable even if the rest qualifies.

| Deadline              | Rule                                                                                                                     |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------|
| <b>Before closing</b> | <b>Exchange agreement and qualified intermediary in place.</b>                                                           |
| <b>Day 45</b>         | Identify the replacement property in writing. Counted from the day the old property closes. Weekends and holidays count. |
| <b>Day 180</b>        | Close on the replacement, or by your tax return due date with extensions if that comes first.                            |

Sources: IRS Fact Sheet FS-2008-18; IRS Form 8824 instructions; Internal Revenue Code section 1031.

## 2 Delaware statutory trust

- **What it is:** a trust that owns real estate. You buy a share and a sponsor manages the property. The IRS treats a properly set up share as real estate, so it can be the replacement in a 1031 exchange (Revenue Ruling 2004-86).
- **Same clock:** the 45-day and 180-day deadlines above apply. It is a kind of 1031 replacement, not a separate rule.
- **Trade-offs to know:** you have no say in management, you usually cannot sell early, and fees vary by sponsor. Most are open only to accredited investors. Read the offering documents with your own adviser.

**If the exchange already failed or closed:** the gain is generally taxed in the year of sale. If the intermediary still holds the money across a year end, part may fall under the installment rules (IRS Publication 537, like-kind exchange). Ask your CPA before any money moves.

## 3 Section 453 installment sale

- **What it does:** if you receive at least one payment after the year of sale, you report the gain as the payments arrive, not all at once (IRS Publication 537, Form 6252).
- **Works for more than real estate:** a business, land, a rental or a home gain over the exclusion. It does **not** work for publicly traded stock or for inventory.
- **Must be in the contract before closing.** Once you have the cash, or the right to it, the gain is yours for that year. It cannot be undone later.
- **Recapture comes first.** Depreciation recapture taxed as ordinary income (mostly equipment) is all due in the year of sale, even if no payment came in that year.
- **Interest counts.** Each payment is part interest, taxed as ordinary income. If you hold more than \$5 million of installment notes from the year, the IRS also charges interest on the deferred tax (section 453A).
- **Risk:** you are relying on whoever owes the payments. Know who that is and what backs the promise.

## 4 Side by side

|                      | 1031 exchange           | Delaware statutory trust | Installment sale        |
|----------------------|-------------------------|--------------------------|-------------------------|
| <b>Assets</b>        | Real estate             | Real estate              | Most, not public stock  |
| <b>Set up by</b>     | Before closing          | Before closing           | Before closing          |
| <b>After closing</b> | 45 and 180 days         | 45 and 180 days          | None                    |
| <b>You get</b>       | Another property        | A passive share          | Payments over time      |
| <b>Tax is</b>        | Deferred until you sell | Deferred until it sells  | Paid as payments arrive |

## 5 Questions to take to your CPA

- ☐ What is my gain, and how much of it is depreciation recapture?
- ☐ Which of these fits what I am selling and what I want next?
- ☐ What has to be signed before the closing date?
- ☐ How much debt must I replace to avoid boot?
- ☐ What does my state tax, and does it follow the federal rule?

Run your own numbers first: free [capital gains tax calculator](#) and [1031 boot calculator](#) at [retirementliteracyfoundation.org](https://retirementliteracyfoundation.org)

**Sources (checked October 10, 2026):** IRS Fact Sheet FS-2008-18, Like-Kind Exchanges Under IRC Section 1031; IRS Form 8824 instructions; IRS Revenue Ruling 2004-86; IRS Publication 537, Installment Sales (2025); IRS Publication 544; Internal Revenue Code sections 453, 453A and 1031. **General education only, not tax, legal or investment advice.** Rules have exceptions, and state rules differ. Confirm your own facts with a CPA or tax attorney before you sign. The Retirement Literacy Foundation is a 501(c)(3) public charity. Nothing is sold.